

The European Commission

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Composition and internal organisation of the European Commission

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Introduction

- Predecessors: High Authority of the ECSC and Commissions of the EEC and Euratom Communities
- Merger Treaty 1965: Commission of the European Communities
- Treaty on European Union and Treaty on the Functioning of the European Union (2007): changed the name: European Commission
- The main executive body of the EU, having other functions: initiating policy and law; supervising the implementation of EU law; administration of EU financial resources;
- It presents the general interests of the EU
- It has a central role within the EU institutional system, indispensable in the functioning of the Union

Composition of the Commission

- Predecessor Commissions had 9 Members: two from bigger and one from smaller Member States
- Treaty of Nice: one national from each MSs; when the EU consists of 27 Member States, the number will be reduced; adoption a fair rotation system
- Lisbon Treaty: from 1 Nov. 2014 the number of Commissioners will corresponds to two thirds of the No. of MSs, however the European Council may alter this number. It has to establish a strictly equal rotation system regarding the sequence of and the time spent by nationals of MSs as Commissioners, reflecting demographic and geographical features of Member States
- 2008 - Irish negative referendum on the Lisbon Treaty; The European Council decision: the No. of Commissioners will be equal to the No. of Member States

The appointment procedure of the Commission

- Term of office: 5 years, corresponds to that of the European Parliament (advantages: taking into consideration the elections of MEPs, continuous legislative work)
- European Council proposes a candidate for President of the Commission
- *European Parliament elects the President* (by a majority of its component Members)
- Member States propose candidates for Commissioners
- Council adopts a list - the President-elect is involved
- Parliamentary hearings, candidates make a statement, answer questions; Parliament gives or refuses its *consent*
- *European Council appoints the Commission* (qualified majority voting)

The appointment procedure of the Commission Vice-Presidents

- The European Council appoints the High Representative of the Union for Foreign Affairs and Security Policy with the agreement of the President, however he is subject to a vote of consent by the EP
- He has a dual role: conducts the Union Foreign and Security Policy and presides over the Foreign Affairs Council; and he is one of the Members of The Commission: he is one of Vice-Presidents
- Dual responsibility towards the European Council and the Commission

Ending of the term of office of Commissioners: motion of censure

- The Commission is responsible to the European Parliament (principle of democracy, political control function of EP)
- MEPs can put question to the Commission; the EP discusses reports submitted by the Commission; EP adopts a resolution on the Commission's Work Programme (General Report, legislative planning)
- One tenth of the component Members of the EP may submit a motion of censure. If the EP votes against the Commission by two-thirds majority of the votes-cast (+ majority of its component Members) the Commission shall resign as a body
- Commissioners remain in office and deal with current business until they are replaced according to the appointment procedure

Ending of the term of office of Commissioners: resignation, compulsory retirement

- The Court of Justice may compulsorily retire a Member of the Commission (on application of the Council or the Commission) when he no longer fulfils the conditions required for the performance of his duties, or in case of serious misconduct.
- The President of the Commission may request the Member of the Commission to resign
- The vacancy shall be filled for the remainder of Members' term of office, the Council may decide otherwise. In case of the President, he shall be replaced for the remainder term of his office. The High Representative also must be replaced for the remaining period

Conditions for appointment, requirements towards Commissioners – General Competence

- The Members of the Commission are chosen on the ground of their *general competence* and *European Commitment* from persons whose *independence* is beyond doubt (Art 17 (3) TEU)
- Usually they are former national politicians (e.g. ministers)
- They have ‘portfolios’ – particular areas of responsibility in a given EU policy or activity
- They have personal cabinets of small teams to assist them in performance of their duties
- The President decides on the internal organisation of the Commission, assigns special fields of activity to Commissioners, he lays down guidelines for the Commission’s work, sets the rules for the composition of cabinets

Conditions for appointment, requirements towards Commissioners – Independence

- The Commission shall promote the general interest of the Union (Art. 17 (1) TEU), they are not representatives of the Member States' governments
- They shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks (Art. 17 (3) TEU)
- Member States shall respect their independence and shall not seek to influence them
- The independence and impartiality of Commissioners are secured by prohibition of carrying out activities or having other jobs incompatible with duties of Commissioners, during and after their term of office

Commissioners – Independence solemn declaration

- Commissioners shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be either compulsorily retired or deprived of his right to a pension or other benefits in its stead (Art. 245 TFEU).

Code of Conduct for Commissioners 2011

- Commissioners should behave in a manner that is *keeping with the dignity and the duties of their office*, both during and after their term of office
- Their *political activities* are strictly restricted; e.g. they may hold only honorary unpaid posts in political, cultural, artistic or charitable foundations or bodies, they cannot have management roles and decision making powers to avoid any risk of a conflict of interests
- The Commissioners' *post term-of-office activities* are also strictly restricted: whenever former Commissioners intend to engage in an occupation during the eighteen months after their term of office, they have to inform the Commission; if the planned occupation is related to the content of their former portfolio, the 'authorisation' shall be given on the basis of the opinion of the *Ad Hoc Ethical Committee*.

Code of Conduct for Commissioners 2011

- Commissioners must make a declaration just as on their occupation before and during their term of office. The financial declaration shall include any holdings and property of the Commissioner and of his/her spouse/partner which might create a conflict of interests
- ***Principles of collective responsibility and confidentiality:*** Commissioners shall not make any comment which would call into question a decision taken by the Commission. They shall also refrain from disclosing what is said at meetings of the Commission.

Internal Organisation of the Commission

- The Commission's internal administrative structure consists of *Directorates-General (DGs)* led by Director-Generals and equivalent *departments* forming a single administrative service. Directorates-General and departments are subdivided into *directorates*, and directorates into *units*.
- *Commission services* deal with more general administrative issues
- *Secretariat-General (DG)* supports the day-to day work, helps to ensure the correct application of EU law, to keep contacts with civil society, supports President' work
- *Secretary-General* assists the President, helps to ensure political consistency by organising coordination between departments, helps in preparing proceedings and conducting meetings of the Commission, responsible for official relations with other institutions

Internal Organisation of the Commission

- the *Legal Service*. Its role is twofold: to provide legal advice to the Commission and its services, and to represent the Commission in all court cases. It helps to improve the quality of drafting of Community legislation
- a number of *agencies and decentralised bodies* have been established at EU level
- *Regulatory agencies* deal with new legal, technical and/or scientific tasks within the EU policy areas.
- *Executive agencies* are entrusted with certain tasks relating to the management of one or more Union programmes

The operation of the Commission

- *Commission's bureaucracy* is the largest one within the EU, 23,000 staff members works in DG-s and services
- The Commission acts *collectively*, based on the Treaties and its *Rules of Procedure*, under the political guidance of the President
- The President convenes the meetings: generally once a week, additional meetings held whenever necessary
- The agenda of meetings is adopted by the President based on the Commission's *Work Programme*
- It acts by a majority of its Members, it is quorate if a majority of its Members are present
- Principle of collective responsibility

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Responsibilities of the the European Commission'

- formulation of policies - setting objectives and priorities for EU action
- proposing legislation to the EU Parliament and to the Council
- managing and implementing EU policies and the EU budget
- enforcing EU law (jointly with the Court of Justice)
- representing the EU outside the Union and Europe (negotiating agreements between the EU and other countries, etc.)

The Commission as a guardian of the Treaties

- The Commission shall ensure the application of the Treaties, and of measures adopted by the institutions, it shall oversee the application of Union law under the control of the Court of Justice of the European Union (Art. 17 (1) TEU).
- Source of information: Member States must notify the Commission about measures transposing directives into national law. Otherwise, the Commission has only ad hoc information about breaches of EU law, e.g. through complaints from private persons
- It may initiate infringement procedures against member States, annulment procedures and procedures for failure to act against other institutions

The Commission's participation in decision-making and legislation – Initiating legislation

- The Commission is virtually the *exclusive initiator of the EU legislation* in all areas of Union competence, except in Police and Judicial Cooperation, where it shares the right of initiative with the Member States, and in the field of Common Foreign and Security Policy
- legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank. The Lisbon Treaty introduced the so-called '*citizens' initiative*': one million citizens (from at least one quarter of MSs may *invite Commission* to submit proposals for legal acts

The Commission's participation in decision-making

- The Commission may take part in the sessions of the European Parliament and in the meetings of the Council. *The Commission is practically present during the whole legislative procedure*, in order to explain its proposal to legislative bodies, and to try to reach an agreement on the proposed measure.
- “Where, pursuant to the Treaties, the *Council* acts on a proposal from the Commission, it *may amend that proposal only by acting unanimously*”, except in certain cases defined by the Treaty. (Art. 293 (1) TFEU).
- “As long as the Council has not acted, the *Commission may alter its proposal* at any time during the procedures leading to the adoption of a Union act” (Art. 293 (2) TFEU).

Implementing acts

- Member States have to implement the Union legislation, they have to adopt all measures of national law necessary to implement legally binding Union acts. In many cases, however, there should be further acts for the implementation of EU legislation. The Treaty provides for the *conferral of powers* from the legislator to the executive - the Commission - to adopt such implementing acts, where uniform conditions for implementing legally binding Union acts are needed.
- The European Parliament and the Council lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, the word 'implementing' shall be inserted in the title of such acts (Art. 291(3)-(4) TFEU).

Adoption of *delegated* acts

- The objective of the power delegation to the Commission is to avoid the adoption of over-complicated and too technical legislation, and to ensure that it can be updated and completed without resorting to repeated adoption of legislation.
- A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to *supplement or amend certain non-essential elements of the legislative act*. The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The *essential elements of an area shall be reserved for the legislative act* and accordingly shall not be the subject of a delegation of power” Art 290 (1) TFEU).

Adoption of *delegated* acts conditions for delegation

- Legislative acts shall explicitly lay down the conditions for the delegation, such as: (a) the European Parliament or the Council may decide to revoke the delegation; (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act. (Art. 290 (2) TFEU). The adjective ‘delegated’ shall be inserted in the title of delegated acts.

The Commission's 'own' decision-making power

- In certain cases the Commission can take decisions 'on its own right': in the area of competition policy (e.g. state aids), transport policy or agricultural policy.
- It can take initiatives, e.g. in the area of public health, Trans-European networks, industry, etc.
- In the field of approximation of laws of the Member States, the Commission decides on the possibility of further application of the existing or the introduction of a new national measure
- The Commission's act may take *any form* provided by the Treaty, such as regulations, directives, decisions, recommendations and opinions

The Commission's implementing powers

- The Commission ensures the application of the Treaties, and of secondary legislation. It shall oversee the application of Union law under the control of the Court of Justice
- Member States' implementing responsibilities vary according to the form of the EU law, e.g. they have to apply directly applicable regulations, while directives require them to adopt national legislation to transpose directives into their legal system, and also the application of transposing legislation.
- The Commission developed a whole system for the improvement of monitoring of the application of EU law, and for the assistance to Member States in effective implementation.

The Commission's implementing powers: measures applied by the Commission

- Preventive measures to avoid infringements:
- To enhance cooperation with Member States – the importance of pre-litigation phase in infringement proceedings
- Interpretative communications on a specific matter of EU law
- Obligation of MSs to notify the Commission on draft technical regulations arising from directives
- Regular publications of statistics, annual report on monitoring the application of EU law by Member States
- Training, information for national administrators and judges
- ‘Package meetings’: discussion of problems with national authorities

The Commission's implementing powers: priority criteria in infringement procedures

- Commission initiates infringement procedures, it applies *priority criteria* reflecting the seriousness of the potential or known failure to comply with the legislation. The followings rank as serious:
- breaches the principles of the rule of law (e.g. lack of access to courts, violations of human rights or fundamental freedoms);
- serious damage to the EU's financial interests (violation of EU law in relation of a project financed from the EU budget);
- undermining the smooth functioning of the EU legal system (violation of an exclusive EU power, repetition of an infringement, systematic incorrect application of EU law, failure to comply with a judgment of the Court of Justice);
- failure to transpose or incorrect transposition of directives (which can deprive large segments of the public of access to EU law)

The Commission's implementing powers: citizens' complaints, complementary measures

- when national authorities fail to comply with EU law; citizens may submit a complaint to the Commission, absolutely informal, no need to demonstrate a formal interest the Commission developed a format for complaints, *new registration system*, the CHAP ('Complaints Handling')
- Mechanisms that *complement proceedings for failure to fulfil obligations* of Member States allowing effective and rapid handling of cases of non-compliance: SOLVIT problem-solving network (internal market problems)
- IMPEL network, an informal cooperation among Member States in the area of implementation of European environmental law

Thank you for your attention!